

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

IN THE MATTER OF:  
IMPLEMENTATION OF THE HAZARDOUS  
WASTE ACT BY THE COLUMBIA FALLS  
ALUMINUM COMPANY LLC, FLATHEAD  
COUNTY, MONTANA. (EPA ID NO.  
MTD057561763; FID 2386)

ADMINISTRATIVE ORDER  
ON CONSENT

Docket No. HW-15-01

Pursuant to the authority of Section 75-10-413, Montana Code Annotated (MCA), the Department of Environmental Quality (Department) hereby gives notice to the Columbia Falls Aluminum Company LLC (CFAC) of the following Statement of Facts with respect to the implementation of and compliance with the Montana Hazardous Waste Act (MHWA) (Title 75, chapter 10, part 4, MCA) and the Administrative Rules of Montana (ARM) (Title 17, chapter 53, sub-chapters 1 through 15) adopted thereunder.

**I. STATEMENT OF FACTS**

The Department hereby makes the following Statement of Facts:

1. The Department is an agency of the executive branch of government of the State of Montana, created and existing under the authority of Section 2-15-3501, MCA.
2. The Department administers the MHWA.
3. CFAC is a "Person." *See* Section 75-10-403(12), MCA.
4. CFAC is a "Generator." *See* Section 75-10-403(7), MCA.
5. CFAC owns and operated a primary aluminum reduction plant, located at 2000 Aluminum Drive, Columbia Falls, Montana. The plant is a "Facility." *See* Section 75-10-403(5), MCA.
6. The aluminum reduction process requires a reduction cell or "Pot" that is lined with a carbon cathode (pot liner). CFAC owns and operated 451 Pots, located in the Pot Room

1 Building of the Facility; 450 of the Pots are in pot holes and one Pot is located in a pot rebuild  
2 area within the Pot Room Building.

3 7. Upon completion of the reduction process, the pot liner is contaminated with  
4 hazardous constituents. Therefore, spent pot liners (SPL) are a regulated hazardous waste.

5 8. The Environmental Protection Agency (EPA) defines SPL from primary  
6 aluminum reduction as K088 listed hazardous waste. *See* 40 CFR, Part 261, Subpart D,  
7 incorporated by reference in ARM 17.53.501.

8 9. On August 4, 1980, CFAC registered with EPA as a hazardous waste generator  
9 and transporter for K088 hazardous wastes. EPA assigned CFAC EPA Registration ID No.  
10 MTD057561763. CFAC currently maintains a hazardous waste generator status of Large  
11 Quantity Generator pursuant to ARM 17.53.601.

12 10. A person may not construct or operate a hazardous waste management facility  
13 without first obtaining a permit from the Department. *See* Section 75-10-406, MCA.

14 11. A hazardous waste management facility permit (Permit) is required to accumulate  
15 and store hazardous waste on site for greater than 90 days. *See* ARM 17.53.601, incorporating  
16 by reference 40 CFR 262.34(a).

17 12. CFAC has not applied for, nor has the Department issued to CFAC, a Permit to  
18 construct or operate a hazardous waste management facility for the storage of K088 hazardous  
19 wastes.

20 13. On July 24, 2014, CFAC sent a letter to the Department requesting an  
21 Administrative Order on Consent (Consent Order) to address the removal of the K088 wastes  
22 from the Pot Room Building. The letter stated CFAC would not be able to remove all the K088  
23 wastes from the Pot Room Building within the 90-day hazardous waste accumulation and storage  
24 time limitations.



1 storage and transport of K088 hazardous wastes shall comply with the substantive requirements  
2 of a hazardous waste storage permit. *See* ARM 17.53.801; 40 CFR 264, Subpart H – Financial  
3 Requirements; 40 CFR 264, Subpart I - Use and Management of Containers; and 40 CFR 264,  
4 Subpart DD - Containment Buildings. The Plan shall also include a description of the procedures  
5 for hazardous waste tracking, quarterly reporting procedures, dust management, equipment  
6 decontamination, spill/release response plan, and how to address any other activities that may  
7 result in a release of hazardous waste.

8       19.     Beginning with the first day the aluminum heel of an individual Pot is removed,  
9 CFAC will have 90 days to process, store and transport the K088 hazardous waste from that  
10 individual Pot off site to a permitted hazardous waste disposal facility.

11       20.     Under the Plan, CFAC shall assign the SPL from each Pot an individual number  
12 or other unique identifier to track its removal, generation, transportation and proper disposal.  
13 The tracking number shall be used on the Uniform Hazardous Waste Manifest. CFAC must also  
14 inventory and track the generation, storage, transport and disposal of any solid wastes removed  
15 from the Pot Room Building.

16       21.     All K088, and any other listed or characteristic hazardous waste, shall be removed  
17 from the Pot Room Building within two years from the date the Department approves the Plan.

18       22.     This Consent Order does not address the demolition and disposal of any building,  
19 structure, or equipment associated with aluminum processing or reduction at the Facility.

20       23.     The Department will review the Plan and send CFAC a review letter. The letter  
21 will notify CFAC of whether the Department approves the Plan. If disapproved, the letter will  
22 direct CFAC to modify the Plan in accordance with the review comments and resubmit the Plan  
23 by the date set forth in the letter. If the Department does not approve the resubmitted Plan,  
24 CFAC agrees to meet with the Department as soon as is possible to discuss an approvable Plan.

1        24.     CFAC may not implement the Plan, including removing, processing, storing or  
2 transporting any K088 hazardous wastes, until CFAC receives written approval of the Plan from  
3 the Department.

4        25.     The Department-approved Plan and compliance dates shall be incorporated by  
5 reference into this Consent Order as enforceable requirements upon written approval by the  
6 Department.

7        26.     K088 hazardous waste and other hazardous wastes removed from the Pot Room  
8 Building are subject to a remediation fee as set forth in ARM 17.53.113, which will not exceed a  
9 maximum annually of \$25,000 fee for each calendar year. *See* Section 75-10-405, MCA (2015).

10       27.     The Plan required in Paragraph 17 shall be sent to:

11                   Michael Rieger  
12                   DEQ Enforcement Division  
13                   P.O. Box 200901  
14                   Helena, MT 59620-0901

15       28.     All other documents required by this Consent Order shall be sent to:

16                   Mark Hall, Manager  
17                   DEQ Hazardous Waste Program  
18                   P.O. Box 200901  
19                   Helena, MT 59620-0901

20 ***Stipulated penalties***

21       29.     In the interest of settlement and to avoid the assessment of administrative  
22 penalties and litigation, CFAC agrees to pay the following stipulated penalties:

23           a.     A \$500 stipulated penalty for each day the Plan required in Paragraph 17  
24           is submitted late; and

             b.     A \$1,000 stipulated penalty for each day on-site storage of K088  
             hazardous waste exceeds the 90-day hazardous waste accumulation and storage time

1 limitation in Paragraph 19; and

2 c. A \$1,000 stipulated penalty for each day the removal of K088 hazardous  
3 waste and other hazardous wastes in the Pot Room Building exceeds the two-year time  
4 limit in Paragraph 21.

5 30. Within 30 days after receipt of written notice, CFAC shall pay to the Department  
6 the full amount of any stipulated penalty that is due. Stipulated penalties must be paid by check  
7 or money order, made payable to the "Montana Department of Environmental Quality," and shall  
8 be sent to:

9 John Arrigo, Administrator  
10 DEQ Enforcement Division  
11 P.O. Box 200901  
Helena, MT 59620-0901

12 31. If the Department assesses stipulated penalties under this Consent Order and  
13 notifies CFAC of the reason for and amount of the stipulated penalty, and CFAC refuses to pay  
14 the amount assessed, the Department is entitled to a judgment in district court for the stipulated  
15 penalty. In such an action, CFAC may dispute the occurrence of the violation before the court;  
16 however, if the court determines that a violation has occurred, CFAC is precluded from  
17 challenging the amount of the stipulated penalty.

18 32. If any event occurs that may cause a delay in submittal of the Plan or removal of  
19 K088 hazardous waste as set forth in this Consent Order, CFAC shall notify the Department in  
20 writing within ten (10) days after it becomes aware of the delay. The notice must include: (a) an  
21 explanation of the reasons for the delay; (b) the expected duration of the delay; and (c) a  
22 description of all actions taken, or to be taken, to prevent or minimize the delay and a schedule  
23 for implementation of those actions. The notification shall be sent to the address in Paragraph 28.

24 33. The Department will review the notice submitted by CFAC under Paragraph 33

1 and will exercise its enforcement discretion to determine if it is appropriate to waive all or a  
2 portion of any stipulated penalties.

3 34. The requirement to pay stipulated penalties remains in effect until this Consent  
4 Order is terminated in writing by the Department.

5 35. Failure to fulfill the requirements of this Consent Order by the specified  
6 timeframes, as ordered herein, constitutes a violation of Title 75, chapter 10, part 4, MCA, and  
7 may result in the Department seeking a court order requiring additional corrective action and  
8 assessing civil penalties.

### 9 **III. CONSENT TO ADMINISTRATIVE ORDER**

10 36. CFAC waives its right to administrative appeal or judicial review of the Statement  
11 of Facts and Administrative Order on Consent set forth herein and agrees that this Consent Order  
12 is the final and binding resolution of the issues raised.

13 37. The terms of this Consent Order constitute the entire agreement between the  
14 Department and CFAC with respect to the issues addressed herein notwithstanding any other oral  
15 or written agreements and understandings made and entered into between the Department and  
16 CFAC prior to the effective date of this Consent Order.

17 38. Except as herein provided, no amendment, alteration, or addition to this Consent  
18 Order shall be binding unless reduced to writing and signed by both parties.

19 39. Each of the signatories to this Consent Order represents that he or she is  
20 authorized to enter into this Consent Order and to bind the parties represented by him or her to  
21 the terms of this Consent Order.

22 40. Except as provided in paragraph 16 of this Consent Order, none of the  
23 requirements in this Consent Order are intended to relieve CFAC from its obligation to comply  
24 with all applicable state, federal, and local statutes, rules, ordinances, orders, and permit

1 conditions.

2 41. This Consent Order terminates upon determination by the Department and written  
3 notification to CFAC that it has fully complied with its requirements.

4 42. This Consent Order becomes effective upon signature of the Department.

5 IT IS SO ORDERED:

IT IS SO AGREED:

6 STATE OF MONTANA  
7 DEPARTMENT OF ENVIRONMENTAL QUALITY

COLUMBIA FALLS ALUMINUM  
COMPANY LLC

8  
9 \_\_\_\_\_  
JOHN L. ARRIGO, Administrator  
Enforcement Division

\_\_\_\_\_  
Signature

10 \_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

11  
12 \_\_\_\_\_  
Title

13  
14 \_\_\_\_\_  
Date